

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Charles Cox, *et al.*

Plaintiffs,

v.

FCA US, LLC, *et al.*

Defendants.

Case No. 18-cv-

NOTICE OF REMOVAL

Defendant FCA US LLC (“FCA US”), through its undersigned counsel, hereby removes this action from the Circuit Court for the County of Oakland, Michigan, to the United States District Court for the Eastern District of Michigan. This removal is made pursuant to 18 U.S.C. § 1964 and 28 U.S.C. §§ 1331, 1441 and 1446.

STATEMENT OF JURISDICTION

1. This is a civil action over which this Court has original jurisdiction under 18 U.S.C. § 1964 and 28 U.S.C. § 1331, and may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 for the reasons set forth below.

THE REMOVED ACTION

2. Plaintiff filed the above-captioned civil action September 14, 2018, in the Circuit Court for the County of Oakland, Michigan, under Case No. 2018-168495-NP (“the State Court Action”).

3. FCA US was served with the Summons and Complaint in the State Court Action on September 20, 2018. FCA US has not answered or otherwise responded to the Complaint. FCA US is not aware of any further proceedings regarding the State Court Action.

4. The Notice of Removal is accompanied by the following documents: The Notice of Removal is accompanied by the following documents: Complaint (attached as Exhibit A); Summons to FCA US (attached as Exhibit B); Summons to VM North America, Inc. (attached as Exhibit C); and Summons to Robert Bosch, LLC (attached as Exhibit D). Other than these documents, no pleadings, process, orders, or other documents have been filed in the State Court Action.

5. The Complaint asserts claims under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c)-(d), the consumer protection statutes of Arkansas, Arizona, Colorado, Florida, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina,

Tennessee, Virginia, Washington and Wisconsin and claims for fraud under the laws of the aforementioned states and the state of Minnesota against Defendants FCA US LLC, Fiat Chrysler Automobiles N.V., VM Motori S.p.A., VM North America, Inc., Robert Bosch LLC and Robert Bosch GmbH, related to Plaintiffs' purchases of 2014-2016 Ram 1500 and Jeep Grand Cherokee diesel vehicles (the "Vehicles").

6. As the basis for these claims, Plaintiffs allege that the Vehicles violate federal emissions standards due to the use of non-EPA compliant software which causes the Vehicles to emit higher amounts of nitrogen oxides ("NOx") in real-world driving than during emissions testing. (*See* Compl. ¶¶ 2-5, 7, 99, 102-03.)

7. As stated in the Complaint, the Vehicles are subject to a widely publicized Notice of Violation, dated January 12, 2017, issued by the Environmental Protection Agency ("EPA" and "EPA Notice"), asserting that the eight Auxiliary Emissions Control Devices ("AECDs") that had not been correctly disclosed to the EPA were included in certain FCA US diesel vehicles, including Plaintiff's Vehicles. (*See* Compl. ¶¶ 200-04.)

8. A multidistrict litigation ("MDL") has been established before the Honorable Edward M. Chen in the U.S. District Court for the Northern District of California involving virtually identical consumer claims regarding FCA US diesel

vehicles subject to the EPA Notice. Plaintiffs concede in their complaint that “this case arises out of the same transaction or occurrence as the currently pending class action in” the MDL. (Compl. at 1). The Second Amended Consolidated Consumer Class Action Complaint filed in the MDL is attached hereto as Exhibit E. FCA US intends to notify the Judicial Panel on Multidistrict Litigation (“JPML”) that the instant action is a “tag-along action” and to have it transferred to the MDL, along with the other, similar consumer cases already pending in the MDL.

PROCEDURAL ISSUES

9. Removal is timely under 28 U.S.C. § 1446(b). Plaintiff served FCA US on September 20, 2018, and FCA US has timely filed this notice within the required 30-day period after service.

10. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the U.S. District Court for the district where the State Court Action is pending.

JURISDICTION IS PROPER UNDER 18 U.S.C § 1964 AND 28 U.S.C. § 1331

11. The Court has jurisdiction over Plaintiffs’ RICO claim pursuant to 18 U.S.C. § 1964(c), which gives private plaintiffs the right to sue for RICO violations in “any appropriate United States District Court.”

12. The Court further has jurisdiction over Plaintiffs’ RICO claim pursuant to 28 U.S.C. § 1331, which gives district courts of the United States “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

13. Although a showing of jurisdiction over Plaintiffs’ state law claims is not necessary for removal, *see, e.g.*, 28 U.S.C. 1441(c), the Court nevertheless also has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367. Plaintiffs’ state law claims form “part of the same case or controversy under Article III of the United States Constitution” as Plaintiffs’ federal RICO claims because both sets of claims “derive from a common nucleus of operative facts,” *Obeid v. Meridian Automotive Systems*, 296 F.Supp.2d 751, 753 (E.D.Mich. 2003); namely Plaintiffs’ allegations that “Defendants concealed, suppressed, and failed to disclose the facts that the Fraudulent Vehicles had defective emission controls and/or emitted unlawfully high levels of pollutants such as NOx.” (Compl. ¶¶ 312, 346, 381, 416, 451, 486, 522, 557, 593, 628, 650,

672, 707, 742, 777, 812, 857, 892, 927, 962, 997, 1032; *see also* Compl. ¶¶ 249; 256).

NOTICE TO ADVERSE PARTY AND STATE COURT

14. Pursuant to 28 U.S.C. § 1446(d), FCA US is serving written notification of the removal of this case on Plaintiffs' counsel.

15. Pursuant to 28 U.S.C. § 1446(d), FCA US will promptly file a Notice of Filing Notice of Removal, attaching a copy of this Notice of Removal with the Oakland County Circuit Court.

CONSENT OF CO-DEFENDANTS

16. Counsel for FCA US has conferred with counsel for VM North America Inc., who consents to the removal of this action. FCA US understands that Fiat Chrysler Automobiles, N.V., VM Motori S.p.A, Robert Bosch LLC and Robert Bosch GmbH have not been served with the Summons and Complaint in the State Court Action.

CONCLUSION

Pursuant to 18 U.S.C. § 1964 and 28 U.S.C. §§ 1331, 1441, and 1446, FCA US hereby removes this action from the Circuit Court of Oakland County to the U.S. District Court for the Eastern District of Michigan.

Dated: September 28, 2018

Respectfully submitted,

DYKEMA GOSSETT PLC.

By: /s/ Jong-Ju Chang
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CERTIFICATE OF SERVICE

I hereby certify that on **September 28, 2018**, I electronically filed the foregoing Notice of Removal with the Clerk of the Court using the electronic filing system, via U.S. mail with prepaid, first class postage affixed, to counsel of record at their following address respective addresses as disclosed on the pleadings.

Respectfully submitted,

DYKEMA GOSSETT PLC.

By: /s/ Jong-Ju Chang

Paul L. Nystrom (P57067)

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